

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT**

MID VERMONT CHRISTIAN SCHOOL,
on behalf of itself and its students and its
students' parents; **A.G.** and **M.G.**, by and
through their parents and natural guardians,
Chris and Bethany Goodwin;
CHRISTOPHER GOODWIN, individually;
BETHANY GOODWIN, individually; **T.S.**
and **K. S.**, by and through their parents and
natural guardians, Nathaniel and Dawna
Slarve; **NATHANIEL SLARVE**, individually;
and **DAWNA SLARVE**, individually,

Plaintiffs,

v.

HEATHER BOUCHEY, in her official
capacity as Interim Secretary of the Vermont
Agency of Education; **JENNIFER DECK**
SAMUELSON, in her official capacity as
Chair of the Vermont State Board of
Education; **CHRISTINE BOURNE**, in her
official capacity as Windsor Southeast
Supervisory Union Superintendent;
HARTLAND SCHOOL BOARD;
RANDALL GAWEL, in his official
capacity as Orange East Supervisory Union
Superintendent; **WAITS RIVER VALLEY**
(UNIFIED #36 ELEMENTARY)
SCHOOL BOARD; and **JAY NICHOLS**,
in his official capacity as the Executive
Director of The Vermont Principals'
Association,

Defendants.

Case No. 2:23-cv-00652-kjd

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

(Oral Argument Requested)

Plaintiffs Mid Vermont Christian School, A.G., M.G., Christopher Goodwin, Bethany Goodwin, K.S., T.S., Nathaniel Slarve, and Dawna Slarve respectfully move this Court for a preliminary injunction pursuant to Fed. R. Civ. P. 65. This Motion is supported by: (1) the attached Memorandum in Support, (2) the attached exhibits, (3) the attached Declaration of Vicky Fogg, (4) the attached Declaration of Christopher Goodwin, (5) the attached Declaration of Bethany Goodwin, (6) the attached Joint Declaration of Nathaniel and Dawna Slarve, and (7) the Verified Complaint (ECF No. 1) (and the exhibits attached thereto). Plaintiffs request oral argument on this Motion.

Two years ago, the Second Circuit held that Vermont could not exclude religious schools from its Town Tuitioning or Dual Enrollment Programs. *See In re A.H. v. French*, 999 F.3d 98 (2d Cir. 2021) (Town Tuitioning); *A.H. v. French*, 985 F.3d 165 (2d Cir. 2021) (Dual Enrollment). And just last year, the Supreme Court held that Maine’s similar tuition program could not exclude religious schools due to their religious exercise. *See Carson v. Makin*, 596 U.S. 767, 789 (2022). Despite these clear precedents, Defendants have excluded Plaintiffs from participating in these and other public programs because of their religious beliefs and exercise, thereby depriving them of public funds that are generally available to secular private schools and the students who attend those schools. In addition, Plaintiffs have been banned from participating in Vermont-sponsored athletics and other extracurricular activities because they sought to adhere to their religious beliefs on sex. Plaintiffs are thus currently barred—on account of their religion—from two state programs that are available to others. The State has discriminated against Plaintiffs based on their religion, acted with hostility to their religious beliefs, burdened their free exercise rights, and infringed their free speech.

Plaintiffs satisfy the factors needed for a preliminary injunction. *See New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015). Plaintiffs are likely to succeed on the merits of their claims because Defendants’ actions and policies violate the First Amendment. *Id.* At a minimum, Plaintiffs have raised “serious questions going to the merits of

[their] claims to make them fair ground for litigation” and the “balance of the hardships tip[] decidedly in [their] favor” because they are currently losing out on public funds and athletic and extracurricular activities. *Id.* (citation omitted). This is irreparable harm because Defendants have violated Plaintiffs’ constitutional rights and students like A.G., M.G., T.S., and K.S. cannot compete in Vermont sports causing them to potentially miss scholarship opportunities, awards, and the like. *See Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 637 (2d Cir. 2020).

So Plaintiffs request that they “be restored to the position they would have occupied had the government not violated their rights under the First Amendment to the U.S. Constitution.” *In re A.H.*, 999 F.3d at 108; *see also N. Am. Soccer League, LLC v. United States Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (citation omitted) (the status quo is “the last actual, peaceable uncontested status which preceded the pending controversy”).

Specifically, Plaintiffs move this Court for a preliminary injunction:

1. Ordering Defendants Bouchey and Samuelson to: (a) approve Mid Vermont Christian School as an approved independent school eligible to receive public funds and (b) allow the School to participate in the Town Tuitioning and Dual Enrollment Programs.
2. Prohibiting Defendants Bouchey and Samuelson from requiring Mid Vermont Christian School—as a condition to obtaining approved independent school status—to comply with the Vermont Public Accommodations Act and Vermont Fair Employment Practices Act (via Agency of Education Rule 2200) to the extent those laws prohibit the School from: (a) requiring all employees to share and live out the School’s religious beliefs, (b) basing its locker room, pronoun usage, dress code, and athletic team policies on biological sex and not gender identities, and (c) requiring students’ parents to share and live out the School’s religious beliefs.
3. Prohibiting Defendants Bouchey and Samuelson from requiring Mid Vermont Christian School—as a condition to obtaining approved independent school status—to adopt and post a statement of nondiscrimination consistent with the Vermont Public Accommodations Act and Vermont Fair Employment Practices Act.

4. Prohibiting Defendants Hartland School Board, Waits River Valley School Board, Gawel, and Bourne from withholding or denying the payment of Town Tuitioning funds to Mid Vermont Christian School for the high school students in their respective school districts who attend Mid Vermont Christian, including for Plaintiff T.S.

5. Ordering Defendant Nichols to allow Mid Vermont Christian to rejoin the Vermont Principals' Association ("VPA") as a full-status member eligible to participate in all VPA events and activities.

6. Prohibiting Defendant Nichols from enforcing the VPA's gender identity policy (or any other VPA policy) against Mid Vermont Christian in such a way that would force the School to: (a) compete against biological males on girls' athletic teams (or vice versa), (b) allow biological males on its own girls' athletic teams (or vice versa), or (c) rewrite its own policies to conform with the VPA's gender identity policy.

7. Prohibiting all Defendants from penalizing Plaintiffs for: (a) speaking about matters of marriage, sex, and gender in line with their religious views, or (b) following their religious beliefs about marriage, sex, and gender.

8. Issuing the above-requested relief without bond.

Dated: December 19, 2023

Respectfully submitted,

s/ Michael J. Tierney

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and served it on the following via electronic mail and mail:

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Local Rule 7(a)(7), I made a good faith attempt to obtain the opposing parties' agreements to Plaintiffs' requested relief. On December 15, 2023, I emailed counsel for all Defendants and requested that Defendants agree to Plaintiffs' requested relief. To date, the Parties have not reached an agreement on Plaintiffs' request. In addition, I informed counsel for Defendants that Plaintiffs are amenable to agreeing to a briefing schedule on this motion.

s/ Ryan J. Tucker
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